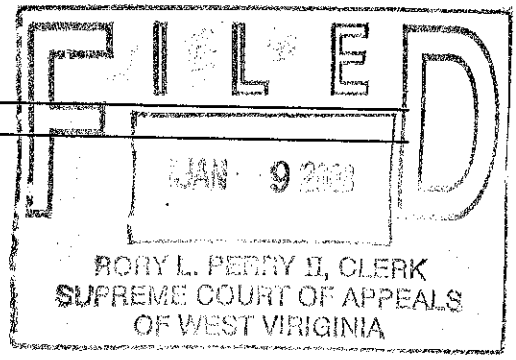
BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRIGNIA

NO. 072111



CRYSTAL A. HATFIELD,

Appellant/ Plaintiff below

v.

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC. d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually

Appellee/ Defendants below

On Appeal from the Circuit Court of Mingo County
(Honorable Michael Thornsbury)
Civil Action No. 05-C-157

RESPONSIVE BRIEF OF APPELLEES HEALTH MANAGEMENT ASSOCIATES, INC., D/B/A WILLIAMSON MEMORIAL HOSPITAL, JACQUELINE ATKINS and CASSIE BALL

Respectfully Submitted,

Debra A. Nelson (West Virginia State Bar #6644)
Amber L. Hanna (West Virginia State Bar #10322)

Mundy & Nelson
Post Office Box 2986
Huntington, West Virginia 25728
Phone: 304-525-1406
Fax: 304-525-1412

TABLE OF CONTENTS

TABLE OF AUTHORITIES

West Virginia Cases

KIND OF PROCEEDING AND NATURE OF RULING IN THE LOWER COURT

This Appeal arises from the Mingo County Circuit Court's Orders entered on July 28, 2006 and February 7, 2007, granting summary judgment to Defendants below/Appellees in this proceeding, Health Management Associates of West Virginia, Inc., d/b/a Williamson Memorial Hospital, Jacqueline Atkins, and Cassie Ball in an employment termination case. Appellant filed her initial complaint on March 31, 2005, against Appellees Williamson Memorial Hospital and Jacqueline Atkins, individually, that included five separate counts for recovery of damages. On May 4, 2006, Appellant filed an Amended Complaint that added Appellee Cassie Ball, as a defendant, in her individual capacity.

On July 28, 2006, the Honorable Michael Thornsbury entered a Final Order, pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, granting summary judgment (judgment as a matter of law), to all Defendants on Counts I, II and III of Plaintiff's Amended Complaint, that asserted causes of action for breach of employment contract, breach of the duty of good faith and fair dealing, and detrimental reliance, respectively. On February 7, 2007, Judge Thornsbury entered a Final Order, as to all defendants on the remaining Counts IV and V of Plaintiff's Amended Complaint, asserting causes of action for tortious interference with a business relationship and intentional infliction of emotional distress. On June 7, 2007, Appellant filed her Petition for Appeal, regarding both Orders. The Petition for Appeal was granted on November 7, 2007. Appellant filed her Brief

on December 7, 2007, that counsel for Appellees received on December 10, 2007. Appellees file their Response herein.

STATEMENT OF FACTS

Appellant was an at-will employee, who was terminated from her employment with Williamson Memorial Hospital on April 14, 2005, by Appellees Jacqueline Atkins and Cassie Ball, pursuant to their duties in running the hospital's day-to-day operations. During calendar year 2005, a hiring freeze was in effect at Williamson Memorial Hospital (hereinafter "WMH") that required corporate approval for any hiring. Deposition C. Ball pp. 18-19, attached as Exhibit B to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. In early 2005, Rob Channell (hereinafter "Channell"), WMH's Director of Human Resources, and Gregg Moore (hereinafter "Moore"), WMH's Director of Plant Operations, created a new position of "Benefit and Special Projects Coordinator". Deposition R. Channell p. 21, attached as Exhibit D to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. While waiting for corporate management's decision as to whether or not the position would be approved, WMH's Interim CEO, Robert Mahaffey (hereinafter "Mahaffey") permitted Channell to begin looking for someone to fill the position. Id. at 18-19. Therefore, Channell proceeded to "post" the position at WMH, pursuant to WMH's policy to offer

positions to current employees, before making the position available to non-employees. Id. pp.18-20.

In response to the posting, several WMH employees inquired of Channell regarding the specifics of the position, including the hours, job duties, and the pay scale. Id. at 32-33. When asked questions about the pay scale, Channell told employees that the position would pay in the range of $7.00 to $9.00 per hour. Id. at 129. Accordingly, many of the individuals who discussed the position with Channell lost interest, either because the pay scale was insufficient for their needs or would result in a decrease in their current rate of pay. Deposition L. Ferrell. pp. 7, 9, attached as Exhibit G to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint; Deposition C. Hall pp. 10-12, attached as Exhibit H to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. Furthermore, the job description that Channell prepared, stated that, at a minimum, a two-year degree was required for eligibility for the position, that further eliminated some employees from eligibility. Channell depo. p. 75, Id.; Job Description, attached as Exhibit I to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint.

Although there were qualified candidates within the hospital, Moore proposed his son's fiancé, the Appellant, Crystal Hatfield, for the position. Deposition G. Moore p. 10, attached as Exhibit L to to Defendant's Motion and

Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. Shortly thereafter, Hatfield met Channell and Moore, off hospital property, for an interview. Deposition C. Hatfield pp. 26-28, attached as Exhibit M to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. Subsequently, Channell asked Mahaffey to approve an annual salary of $29,120.00 for Hatfield to fill the position, representing to Mahaffey that the salary fell within the pay range for the position. Deposition R. Mahaffey p.14, attached as Exhibit N to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. On March 28, 2005, Mahaffey, Channell and Moore sent a letter to Hatfield, offering the position to her at an annual salary of $29,120, which the Appellant later accepted. Hatfield depo. p. 44, Id.; Letter to Hatfield, dated March 28, 2005, attached as Exhibit P to Defendants' Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. However, the letter did not make any promise nor representation as to the duration of Appellant's employment. Id.

Before beginning her employment with the appellee WMH, the appellant received a copy of WMH's employee handbook and acknowledged, in writing, her status as an at-will employee, who could be terminated "at any time for any reason." Hatfield depo. p. 7, Id. Specifically, the document that the appellant signed, provided notice that:

The employee handbook contains a brief description of the benefits offered by the facility and an overview of the facilities' policies and procedures. ***Your employment with the facility is for no definite period of time*** *and nothing in this handbook is intended to nor does the handbook represent any type of employment agreement or contract.* ***Your employment is on an "at-will" basis. Employment may be terminated by you or the facility at any time for any reason.*** *This handbook and the policies, rules and procedures in it may be amended, modified or discontinued at any time by the facility in its sole discretion.*

No supervisor or management employee has authority to waive this disclaimer or to change your employment from an "at-will" basis which may be terminated at any time for any reason.

A signed acknowledgment of this disclaimer will be placed in your personnel file.

Id.; Health Management Associates, Inc. Employee Handbook Notification, attached as Exhibit A to Defendants' Memorandum in Support of Motion for Summary Judgment, served on April 14, 2006 (emphasis added).

Moreover, Appellant understood her status as an at-will employee of Appellee WMH and that she could be terminated by the appellee, at any time, for any reason. The appellant was deposed and testified as follows:

QUESTION: So you understood at the time that you accepted the employment with Williamson Memorial Hospital that you were in [sic] what was called an at-will employee?

ANSWER: Correct.

QUESTION: You understood that you could terminate your employment for any reason and you understood that?

ANSWER: That I could?

QUESTION: That you could.

ANSWER: Yes.

QUESTION: And you understood that the hospital could terminate your employment for any reason?

ANSWER: Yes. But I also – and I may be wrong and just misinterpreted – I also understood that by having the letter signed by Mr. Mahaffey and Mr. Channell, that I was more secure – that that was more of a contract for that position.

QUESTION: Has anyone specifically told you that or was that just your understanding?

ANSWER: That was my understanding.

QUESTION: Just so we're clear, no one specifically told you that?

ANSWER: No.

Deposition C. Hatfield p. 74.

Likewise, when questioned concerning any promises or assurances of employment, the appellant testified:

QUESTION: In any discussions with anyone at-williamson Memorial Hospital whether it be Mr. Moore, Mr. Channell, Mr. Mahaffey, anyone, did anyone ever give you any promises or any assurances of any specific duration of employment?

ANSWER: You mean like you'll be here for so long or forever?

QUESTION: Yes.

ANSWER: No, it was never discussed.

Id. p. 76.

Mahaffey unexpectedly left his position as WMH's Interim CEO on April 1, 2005. Mahaffey depo. p. 8, Id. Scott Campbell, Vice President of Operations for HMA's mid-Atlantic Division, assigned Appellee Jacqueline Atkins (hereinafter "Atkins"), and Appellee Cassie Ball (hereinafter "Ball"), with the joint responsibility of running WMH's day-to-day operations, until another CEO could be found to replace Mahaffey. Deposition J. Atkins p. 14, attached as Exhibit A to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint; Deposition C. Ball pp. 28-29, Id.; Deposition C. Campbell pp. 8, 27, attached as Exhibit O to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint.

Appellant began her employment at WMH on April 11, 2005. Hatfield depo. p. 87, Id. On the same day, Appellee Atkins, acting within the scope of her duties, received Appellant's Employee Data Sheet, and then learned of Appellant's employment and annual salary of $29,120. Atkins depo. p. 21, Id. Appellees Atkins and Ball, then investigated as to whether the position had received corporate approval and whether the appellant's salary was appropriate for the position. Id.; Ball depo. p. 47, Id.

Thereafter, Appellees Atkins and Ball received and became aware of complaints from numerous hospital employees regarding Appellant's employment. Atkins depo. pp. 24-27, Id. Many of Appellee WMH's employees complained that either the pay scale or educational requirements had been

misrepresented to them, in light of the fact that Ms. Hatfield did not have the requisite two-year college degree and that Appellant's salary was more than represented to each of them. Atkins depo. p. 30, Id.; Ferrell depo. p.10, Id.; Deposition C. Smith p. 10, attached as Exhibit Q to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint.[1]

Because of the growing dissatisfaction among the WMH employees regarding the conditions under which Appellant was employed, and to insure that a fair process was in place with respect to filling the position, Appellees Atkins and Ball voluntarily chose to confer with corporate counsel regarding the situation.[2] Atkins depo. p. 66, Id.; Ball depo. p. 29, Id.; Campbell depo. pp. 37-38, Id.; Deposition K. Holloway pp. 5, 50, attached as Exhibit R to Defendant's Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint. Appellee Atkins then directed Channell, as Appellant's direct supervisor, to inform Appellant of her termination. Atkins depo. p. 5, Id. On April 14, 2005, pursuant to Appellee Atkins' instructions, Channell informed Appellant of her immediate termination. Channell depo. p. 48, Id.

---

[1] The source or sources of Hatfield's pay rate and educational background are unknown. However, one WMH employee testified that Gregg Moore's nephew, who was employed as a scrub tech in WMH's operating room, and who lived next door to Moore and Hatfield, was the source of the confidential information. Smith depo. pp. 8-9.

[2] Corporate counsel approved Appellant's termination, although Appellees Atkins and Ball had the authority to terminate Hatfield's employment, without corporate approval. Holloway depo. p. 50.

Following the termination, Appellant and her daughter continued to live with Appellant's fiancé, in Moore's home. Hatfield depo. pp. 6-7, Id. Appellant resumed her employment with her previous employer, Psychological Assessment, as an Executive Administrative Assistant, at a wage of $12.00 per hour. Id. p. 65. Appellant was not required to pay any expenses for room and board and did not have any credit payments to make between April 14, 2005 and her reemployment on or about September 19, 2005. Id. p. 107. Moreover, Appellant collected unemployment benefits between April 1, 2005 and September 2005. Id. pp. 67-68.

Appellant filed her civil action on May 31, 2005, alleging breach of contract, breach of the duty of good faith and fair dealing, tortious interference with her employment contract and intentional infliction of emotional distress.

RESPONSE TO ALLEGED ASSIGNMENTS OF ERROR

I. **Appellant could not sustain a breach of contract claim because the alleged employment contract did not specify the duration of Appellant's employment.**

II. **Appellant could not sustain a cause of action for breach of the duty of good faith and fair dealing, as the circuit court assumed an employment contract existed, but because the duration of Appellant's employment was not specified, Appellant's at-will employment status was not altered, and the circuit court correctly concluded Appellant's termination could not constitute a breach of contract.**

III. **Appellees made no promise regarding the duration of Appellant's employment, so there was no**

promise on which Appellant could rely, to her detriment.

IV. **Appellant failed to present the circuit court with any evidence to support an allegation that either Ms. Atkins or Ms. Ball acted in an individual capacity in terminating Appellant's employment, or that Appellant suffered any damages therefore, the circuit court did not commit any error in dismissing Appellant's claim for tortious interference.**

V. **The circuit court correctly found that the evidence could not permit a reasonable juror to find that Appellant's emotional damage claim was sufficient to sustain a claim for intentional infliction of emotional distress.**

STANDARD OF REVIEW

Appellant correctly states that the standard of review for this Court is *de novo*, in reviewing the circuit court's Orders granting summary judgment. However, this Court has found that "[s]ummary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syl. Pt. 2, Minshall v. Health Care & Retirement Corp., 208 W.Va. 4, 537 S.E.2d 320 (2000), citing, Syl. Pt. 4 Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994).

Although courts continue to take special care when considering summary judgment in employment and discrimination cases, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no

genuine issue of material fact." Williams v. Precision Coil, Inc. 459 S.E.2d 329, 338 (W.Va. 1995).

LEGAL ARGUMENT

I. Appellant could not sustain a breach of contract claim because the alleged employment contract did not specify the duration of Appellant's employment and did not change Appellant's at-will employment status.

Assuming, *arguendo*, that the March 28, 2005 letter is a contract of employment, Appellees had the right to terminate Appellant's employment, because the purported contract has no provision addressing duration of employment and, thus, there can be no cause of action for breach of contract. "When a contract of employment is of indefinite duration it may be terminated at any time by either party to the contract." Minshall, *supra*, Syl. Pt. 4, citing Wright v. Standard Ultramarine & Color Co., 141 W.Va. 368, 90 S.E.2d 459 (1955).

Appellant understood that she was an at-will employee and acknowledged that fact, in writing, to WMH. Hatfield depo. pp. 70-71; Health Management Associates, Inc. Employee Handbook Notification dated March 31, 2005, signed by Appellant Hatfield. Therefore, whether or not the March 28, 2005 letter is an employment contract, Appellant's at-will employment status is not altered.

Appellant argues that the circuit court could not determine whether or not the letter constituted an employment contract, as that was an issue for the jury's

determination. Br. pp 8-9. Accordingly, Appellant argues that the circuit court inappropriately granted summary judgment to Appellees, without allowing a jury to determine whether the letter offering employment constituted a contract and, if so, whether Appellees breached that contract. Id. at 9-10. However, Appellant fails to recognize that the circuit court proceeded with its analysis on the assumption that the letter was a contract, to determine whether there was any ambiguity to interpretation of the alleged contract. Order entered July 28, 2006, pp. 6-7. Appellant does not challenge that part of the circuit court's Order that found that WMH's employee handbook did not alter Appellant's at-will status. Id. pp. 8, 9, at para. 10-12.

Assuming, for purposes of its analysis, that the March 28, 2005 letter was a contract, the circuit court cited to this Court's decision in Toppings v. Rainbow Homes, Inc., 200 W.Va. 728, 490 S.E.2d 817, 822 (1997), stating, "[o]ur traditional rule of contract interpretation is that a valid written agreement using plain and unambiguous language is to be enforced according to its plain intent and should not be construed." Order entered July 28, 2006, pp. 6-7, para. 2. Moreover, the circuit court appropriately recognized that "[t]he function of the court is to interpret and enforce written agreements and not to make, extend or limit the written agreement." Id., citing Toppings, *supra*, 490 S.E.2d at 822.

In addition, the circuit court relied on this Court's opinions with respect to the at-will employment relationship, as reiterated most recently in Sayres v. Bauman, 188 W.Va. 550, 552, 425 S.E.2d 226, 228 (1992), wherein

this Court stated, "[t]he law on 'at-will' employment is both clear and well-defined in West Virginia. Individuals employed pursuant to an oral agreement in which the expected duration of employment was never specified are considered 'at-will' employees." Order entered July 28, 2006, p. 7, para. 7 (internal citations omitted). Furthermore, the circuit court recognized this Court's directive that "[w]hen a contract of employment is of indefinite duration it may be terminated at any time by either party to the contract." Id., citing Miller v. Massachusetts Mut. Life Ins. Co., 193 W.Va. 240, 242-43, 455 S.E.2d 799,801-02 (1995) (internal citations omitted).

In applying that legal analysis to the language of the letter of March 28, 2005 (the "purported contract"), the circuit court found that "The Letter is completely silent on the duration of the employment relationship and contains no language that implies any type of long-term arrangement. The Letter does not address whether the relationship is anything other than an 'at-will' employment relationship." Order entered July 28, 2006, p. 7, para. 3. The circuit court correctly concluded that the language of the alleged contract was not ambiguous and that there was nothing in the language that altered Appellant's at-will employment status. Id. at para. 4, 5.

Therefore, the circuit court did not leave a jury question unresolved and proceed to grant the Appellees summary judgment, as Appellant suggests. Rather, the circuit court found that, because there was no ambiguity to the terms of the "contract", that required a jury's interpretation, and because the plain

language of the "contract" did not alter Appellant's at-will employment status, as a matter of law, there was no issue of material fact for a jury to determine, even assuming the letter was construed as a contract of employment. Id. p. 9, para. 12, 13. Accordingly, this Court should uphold the circuit court's Order of July 28, 2006, granting Appellees summary judgment with respect to Count I of Plaintiff's Amended Complaint.

II. **Appellant could not sustain a cause of action for breach of the duty of good faith and fair dealing, even assuming an employment contract existed, because the duration of Appellant's employment was not specified and Appellant's at-will employment status was not altered by the alleged contract.**

As discussed, *supra*, for purposes of its analysis, the circuit court assumed that "The Letter" of March 28, 2005, constituted an employment contract. However, there was no reason for the court to submit the preliminary issue to the jury as to whether The Letter constituted an employment contract, because Appellant would still not be able to sustain a cause of action for breach of that purported contract, based on the termination of Appellant's at-will employment.

Finding that Appellant failed to submit even a "scintilla of evidence" to refute Appellant's at-will employment status, the circuit court relied on this Court's decision in Miller, *supra*, stating "our law is well-settled: we do not recognize the implied covenant of good faith and fair dealing in the context of an at-will employment contract." Order entered July 28, 2006, p. 9, para. 12,14. As noted

in the circuit court's findings of fact, discussed more fully, *infra*, Appellant acknowledged, in writing, her status as an at-will employee of WMH, who could be terminated "at anytime for any reason." Id., p. 2, para. 4. The document that Appellant signed also notified Appellant that "[n]o supervisor or management employee has authority to waive this disclaimer or to change your employment from an 'at-will' basis which may be terminated at any time for any reason." Id.

In addition, the circuit court relied on Appellant's admission that Appellees did not make any representation to her, in any form, regarding the duration of her employment. Id., p. 3, para. 5 (emphasis added). Therefore, even if a jury were to consider whether The letter of March 28, 2005 constituted a contract, and then determined that it did, there is still no evidence that would allow a juror to reasonably conclude that Appellant was anything other than an at-will employee. Thus, the circuit court correctly granted Appellees summary judgment as to Count II of Plaintiff's Amended Complaint.

III. Appellees made no promise regarding the duration of Appellant's employment, accordingly there was no promise on which Appellant could rely, to her detriment.

Any subjective belief that Appellant had that her employment with Appellee WMH would be permanent, was unfounded, and contradicts Appellant's acknowledgement of her at-will status. As the basis for the circuit court's alleged error in granting summary judgment to Appellees on Appellant's claim for detrimental reliance, Appellant admits that "*her belief* that her new position would be permanent was the basis for her decision to resign from her [previous

employment] and accept the position with WMH." Br. p. 12 (emphasis added). However, Appellant further asserts that the letter, dated March 28, 2005, from Appellee WMH to Appellant, "represented an express promise to employ the Plaintiff." Id. at 14. "This Court has recognized that under certain circumstances, employers may be bound by promises that they make to their employees." Tiernan v. Charleston Area Medical Center, Inc., 212 W.Va. 859, 575 S.E.2d 618 (W.Va. 2002). Although the letter from WMH to Appellant may have been an offer to employ Appellant, the letter did not promise that Appellant would be employed for a specific duration of time or permanently. Acknowledging that the letter did not make any promise regarding the duration of Appellant's employment, Appellant asks this Court to uphold her claim for detrimental reliance. Br. p. 12. Appellant's argument is not well founded and is nothing more than a feeble attempt to circumvent the fact that Appellant was an at-will employee.

In the Tiernan case, cited by Appellant, this Court held that to prevail on a claim for detrimental reliance, Appellant would have to prove (1) by clear and convincing evidence that the employer made an express promise and "should have expected that such a promise would be relied and/or acted upon by an employee," and (2) by a preponderance of the evidence the employee, through no fault of her own, reasonably relied on the promise, which led to termination of the employee and a breach of the employer's promise. Tiernan,

575 S.E.2d at 625. Appellant is unable to prove the elements required to establish a claim for detrimental reliance under West Virginia law.

First, the circuit court relied on Appellant's sworn testimony in which she acknowledged that no one associated with Appellee WMH ever made any type of promise to her regarding the duration of her employment. *See*, Order entered July 28, 2006, p. 10, para 3, citing, Health Management Associates, Inc. Employee Handbook Notification, dated March 31, 2005, and signed by Appellant. Although the letter from Appellee WMH to Appellant, dated March 28, 2005, offered Appellant a position and stated an annual salary rate, the letter did not create anything more than an "at-will employment" position. Hatfield depo. p. 44; Letter to Hatfield, dated March 28, 2005, attached as Exhibit P to Defendants' Motion and Memorandum in Support of Motion for Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint.

In a similar case, Henkel v. Educational Research Council of America, 45 Ohio St. 2d 249, 344 N.E.2d 118 (1976), the employer company wrote a letter to the employee whereby the defendant agreed to employ the plaintiff as a Research Assistant in Science at a specified *annual salary*. Id., at 257 (emphasis added). Appellant claimed that the letter was an employment offer, and "a hiring for a specified sum per year imports a hiring for a year." Id., at 250. The court disagreed, stating that:

> [r]elevant Ohio case law, cited by the parties, does not support that conclusion. Nor do the decisions of courts in other states. The modern rule is that in the absence of facts and circumstances which indicate that the agreement is for a specific term, an employment

> contract which provides for an annual rate of compensation, but makes no provision as to the duration of the employment, is not a contract for one year, but is terminable at-will by either party.

Id., at 251. Appellee WMH wrote a similar letter to Appellant, offering Appellant a position and stating an annual salary. Therefore, as in the Henkel case, the employment agreement between Appellant and Appellee WMH "did not specify a period of time, but rather a rate of salary, and as such, was terminable at-will by either party." Id., at 261.

Further, Appellant acknowledged, in writing, to Appellee WMH that her employment with Appellee WMH was "for no definite period of time"; that her employment was "on an 'at-will' basis"; that her employment "may be terminated by . . . the facility at anytime for any reason" and that "[n]o supervisor or management employee has authority to waive this disclaimer or to change your employment from an 'at-will' basis which may be terminated at any time for any reason." *See*, Order entered July 28, 2006, p. 2, para. 4, citing, Health Management Associates, Inc. Employee Handbook Notification, dated March 31, 2005, and signed by Appellant. Therefore, Appellant cannot prove by clear and convincing evidence that Appellee WMH made an express promise of durational or permanent employment or that Appellee WMH should have expected the promise to be relied upon, because a promise was not made of anything more than "at-will employment."

Further, Appellant cannot prove the second element of detrimental reliance in that she reasonably relied on the promise, because Appellee WMH, at

most, promised "at-will" employment. Appellant claims that she meets the reasonable reliance requirement because she relied on the letter of March 28, 2005. However, Appellant cannot reasonably rely on a promise of permanent employment or any duration of employment because the letter makes no promise of employment for a specific duration of time and Appellant knew she was hired as an "at-will" employee. Appellee WMH offered a position of employment to Appellant, which Appellant accepted, with full knowledge that the position could be terminated "at any time for any reason." Appellant has not and cannot identify any promise that Appellee WMH made with regard to the duration of her employment, other than that she could be terminated "at any time for any reason."

Rather than rely on any promise of duration of employment, Appellant took the same risk that any at-will employee takes in leaving one job for another – that the employment situation may not work out for the employee or the employer, or both. Appellee WMH made no promise, guarantee, nor assurance regarding the duration of Appellant's employment for Appellant to rely upon. Appellant does not satisfy the two elements necessary for a detrimental reliance claim.

Appellant also contends that the Tiernan case makes clear that a claim for detrimental reliance is one for the jury's consideration. Br. p. 13-15. However, Appellant has misconstrued the reasoning of Tiernan, in which this Court explained that a question of fact for the jury arises when retaliation by the employer is alleged and the employer's motive for termination is put into

question. In this case, there is no question of fact, because the Appellant has not made any claims regarding retaliation, and Appellee WMH's motive for terminating Appellant's employment is not in question. Therefore, Appellant did not rely on a promise made by Appellee; Appellant has no actionable legal right to recovery under a theory of detrimental reliance; or otherwise; and the circuit court correctly granted summary judgment to Appellees as to Count III of Plaintiff's Amended Complaint.

IV. Appellant failed to present the circuit court with any evidence to support an allegation that either Appellee Atkins or Appellee Ball acted in an individual capacity in terminating Appellant's employment, or that Appellant suffered any damages, therefore, the circuit court did not commit any error in dismissing Appellant's claim for tortious interference.

Appellant presented no evidence that either Appellee Atkins or Appellee Ball acted outside of their employment duties and authority in terminating Appellant's employment with WMH. The circuit court applied the elements required to support a claim for tortious interference of a contract or business relationship, as set forth in this Court's opinion in Torbett v. Wheeling Dollar Savings & Trust Co., 173W.Va. 210, 314 S.E.2d 166 (1983), which states:

> In order to establish a prima facie case of tortious interference in an employment relationship, a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party **outside** that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages.

314 S.E. 2d at 173 (emphasis added).

Although a business relationship existed between Appellant and Appellees, thereby satisfying the first element, the second element cannot be satisfied because there was not an intentional act of interference by a party *outside* the relationship. The circuit court recognized the black letter law that this Court set forth in its holding in Shrewsbury v. National Grange Mutual Insurance Co., that "no one can be liable for tortious interference with his own contract." 183 W.Va. 322, 325, 395 S.E.2d 745, 748 (1990). Appellant does not challenge the legal application of the above cases, nor the soundness of those decisions. Rather, Appellant alleges that the evidence presented to the circuit court was sufficient to establish a *prima facie* case of tortious interference. Br. p. 17. To the contrary, the evidence was insufficient, as Appellant failed to present any evidence to meet the second element required for a claim of tortious interference – that there was "an intentional act of interference by a party *outside* the relationship or expectancy." Tiernan, 506 S.E.2d at 592 (emphasis added).

After reviewing all of the evidence presented, the circuit court found that, "it is **undisputed** that Atkins and Ball were jointly responsible for running the day-to-day operation of Appellee WMH at the time of Hatfield's termination on April 15, 2005." Order, entered February 7, 2006, p. 10, para. 6. (emphasis added). Furthermore, the court found "no evidence suggesting that Atkins and Ball were not acting with [sic] the scope of their employment and duties as employees of WMH when Hatfield's employment was terminated." Id. (emphasis

added). In applying those facts to the law, as set forth in Tiernan, *supra*, the circuit court correctly found that "WMH, who was a party to the employment relationship with Hatfield, cannot be held liable for allegedly interfering with its own contract or business relationship . . ." Id. at para 7.

Appellant's brief totally ignores the fact that Appellant failed to present any evidence by which a jury could reasonably conclude that either Appellee Atkins or Appellee Ball were acting outside of the scope of their employment duties with regard to Appellant's termination. Whether or not Atkins or Ball conferred with corporate management is immaterial to this Appeal, as there is no evidence that either Atkins or Ball were required to obtain approval for the termination from corporate management. The fact that Atkins and Ball conferred with corporate management merely shows that Atkins and Ball seriously contemplated their decision and sought a second opinion concerning the termination, regardless of whether that was required of either of them, as part of their employment duties.

Moreover, although Appellant disputes the fact that Atkins and Ball conferred with corporate management, there is no genuine issue of material fact because the evidence presented does not show that Atkins and/or Ball had a duty to confer with corporate management before terminating Appellant. In fact, the evidence presented showed that Appellees Atkins and Ball had the authority to terminate employees, as part of their duties in running Appellee WMH's day-to-day operations. The circumstances might be different if Appellees Atkins and Ball were required to consult with corporate management prior to terminating

Appellant and failed to do so, or if Appellee WMH or corporate management instructed Appellee Atkins or Appellee Ball not to terminate Appellant and Appellee Atkins and Appellee Ball disobeyed such a mandate and proceeded to terminate Appellant's employment, regardless. However, neither of those situations is consistent with the facts, *sub judice*. Therefore, there is no evidence that either Appellee Atkins or Appellee Ball were acting outside the scope of their duties in terminating Appellant.

Appellees' Memorandum in Support of Summary Judgment on Counts IV and V of Plaintiff's Amended Complaint set forth an alternative grounds for the circuit court to find that summary judgment was appropriate, that assumed, *arguendo*, that Atkins and Ball were acting outside of their employment relationship in terminating Appellant's employment. Appellant argues that Appellees' alternative theory created a factual issue for jury determination, and thus, defeated Defendants' Motion for Summary Judgment. Br. p. 18. Appellant's logic on that point is flawed, because the circuit court did not need to consider the Appellees' policy argument on that issue, after the court correctly found there was no evidence to support Appellant's claim that either Appellees Atkins or Ball acted outside of their employment duties in terminating Plaintiff's employment.

Appellant also cites to this Court's decisions in Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E.2d 329 (1995), Conrad v. ARA Szabo, 198 W.Va. 362, 480 S.E.2d 801 (1996) and Hanlon v. Chambers, 195 W.Va. 99, 464 S.E.2d

741 (1995), in which this Court urged the circuit courts to exercise caution in granting summary judgment in employment cases, specifically with regard to allegations of discrimination in the employment setting. Br. pp. 18-19. However, Appellant admits that "this case does not involve allegations of discrimination . . ." Id. Therefore, there was no evidence for the circuit court, nor is there evidence for this Court, to find in Appellant's favor.

Accordingly, Appellant has failed to present this Court with any evidence that the circuit court failed to consider when the court concluded that "even when the evidence is viewed in a light most favorable to the Plaintiff, there is no evidence suggesting that Atkins and Ball were not acting with [sic] the scope of their employment and duties as employees of WMH when Hatfield's employment was terminated." Order, entered February 7, 2007, p. 10, para. 6. As this Court has stated,

> [i]t is impossible for one party to a contract to maintain against the other party to the contract a claim for tortious interference with the parties' own contract. Neither party is a stranger to the contract. Each party has agreed to be bound by the terms of the contract itself, and may not thereafter use a tort action to punish the other party for actions that are within its rights under the contract.

Shrewsbery, 395 S.E.2d 747. Because Atkins and Ball were acting within the scope of their employment, they are considered agents of WMH, and cannot be held liable for tortious interference with a contract between Appellee WMH and Appellant.

Appellant's fourth assignment of error consists of nothing more than red herrings created for the purpose of attempting to divert this Court's attention from the fact that Appellant cannot meet the second element required for a tortious interference claim, based on the evidence that exists and that was presented to the circuit court. Appellant attempted to distract the circuit court with the same arguments during Plaintiff's oral argument to the circuit court on this issue. However, without actual evidence that either Appellees Atkins or Ball (or both), acted in some way outside of the authority that corporate management gave them to run Appellee WMH's day to day operations, Appellant cannot demonstrate a *prima facie* case of tortious interference with a business or employment relationship. Therefore, this Court should uphold the circuit court's Order granting Defendants below, judgment as a matter of law on Count IV of Plaintiff's Second Amended Complaint.

V. The circuit court correctly found that the evidence could not permit a reasonable juror to find that Appellant's emotional damage claim was sufficient to sustain a claim for intentional infliction of emotional distress.

Appellant has no evidence to allow a jury to support a cause of action for intentional infliction of emotional distress. In Travis v. Alcon Laboratory, Inc, 202 W.Va. 369, 375, 504 S.E.2d 419, 425 (1998), this Court reiterated the elements required to sustain a cause of action for intentional infliction of emotional distress (hereinafter "IIED"), and sometimes also referred to as "the tort of outrage". The

circuit court applied the Travis factors in analyzing Appellant's claim for IIED. Order entered February 7, 2007, p. 11, para. 3. Furthermore, the circuit court relied on this Court's definition of the conduct envisioned in the first factor, referencing "extreme and outrageous" conduct, as set forth in Tanner v. Rite Aid of West Virginia, Inc., 194 W.Va. 643, 461 S.E.2d 149 (1995). Order entered February 7, 2007, p. 12, para. 5. Appellant does not challenge the law that the circuit court applied to the evidence and facts presented. Appellant incorrectly asserts that the circuit court "overlooked" evidence regarding Appellees' conduct and the emotional distress arising from that conduct.

This Court stated in Travis, *supra*, and the circuit court correctly recognized, that "[i]t is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery . . .". Order entered February 7, 2007, p. 11, para 4, quoting Travis, 504 S.E.2d at 427.

Appellant admits that Appellees did not ridicule, harass, or verbally abuse her, nor make any type of derogatory or inappropriate statements with respect to either her employment or termination. Br. pp. 20-21. Appellant boldly contends that because "the Defendants deliberately failed to inform her that her job was in jeopardy or could be eliminated, or otherwise took any action to alert her that her employment situation was so precarious", Appellees' actions can be equated with "public ridicule." Id. Although Appellant's argument is ingenuous, it fails to explain how Appellees' silence can be construed to constitute public ridicule.

Furthermore, Appellant fails to cite to any case finding that silence equates to public ridicule.

The circuit court correctly found that "Atkins and Ball terminated Hatfield's employment without engaging in any type of conduct that could even remotely be considered outrageous." Order entered February 7, 2007, p. 12, para. 7. Furthermore, the court explained that if it, or any court, for that matter, "were to adopt Plaintiff's argument that the elements of intentional infliction of emotional distress are met simply because the Defendants did not inform the Plaintiff that there were any problems with her employment, the 'floodgates' would essentially be open to allow conduct that is clearly not 'outrageous' to be considered 'outrageous' in a legal sense." Id., pp. 12-13, para 8. Thus, the circuit court clearly understood and considered Appellant's argument, but correctly found that Appellant's claim does not meet the type of "outrageous", extreme, intolerable, or atrocious conduct that must exist to establish a *prima facie* case of IIED.

Secondly, Appellant contends that the circuit court ignored this Court's holding in Travis, *supra*, recognizing that severe emotional distress may include embarrassment. Br. p. 21. Moreover, Appellant asserts that the circuit court ignored the fact that the reasonableness of a plaintiff's reaction would normally be a jury question and not susceptible to resolution through a motion for summary judgment. Id.

However, it is Appellant who ignores the fact that this Court has upheld summary judgment orders entered on behalf of defendants in employment cases

alleging IIED and breach of employment contract. In Dziinglski v. Weirton Steel Corp., 191 W.Va. 278, 445 S.E.2d 219 (1994) this Court reviewed and upheld the lower court's order granting summary judgment to the defendant, stating:

> [t]he prevailing rule in distinguishing a wrongful discharge claim from an outrage claim is this: when the employee's distress results from the fact of his discharge – e.g., the embarrassment and financial loss stemming from the plaintiff's firing – rather than from any improper conduct on the part of the employer in effecting the discharge, then no claim for intentional infliction of emotional distress can attach.

191 W.Va. 278, 445 S.E.2d 219 (1994). Therefore, any embarrassment or other distress that Appellant has experienced, as a result of her termination, rather than as the result of some type of "outrageous" conduct, is not recoverable under the tort of IIED.

In Minshall, *supra*, this Court again found that summary judgment was appropriate to the defendant on Plaintiff's claim for IIED against her former employer. 537 S.E.2d at 325. The Minshall Court found that the only evidence the plaintiff presented regarding the employer's conduct in terminating her, was that "she was terminated shortly after returning from a previous discharge." Id. Upholding the circuit court's award of summary judgment to the defendant, the Minshall Court concluded, "[s]uch conduct, in and of itself, is simply not outrageous." Id.

Appellant's argument suggests that the circuit court should submit whatever evidence there may be to the jury to determine whether the plaintiff has met the elements required for a claim of IIED. Clearly, Appellant fails to understand the lower court's duty "to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery . . ." See *also*, Travis, *supra*, 504 S.E.2d at 427. As in Minshall and Dziinglski, Appellant failed to present any evidence of the type of conduct that could reasonably be considered outrageous and the circuit court appropriately awarded summary judgment to Appellees here/Defendants below.

Furthermore, even assuming that Appellant had evidence to allow a jury to consider whether Appellees acted outrageously in terminating Appellant's employment, Appellant has never identified any form of **severe** emotional distress that she has allegedly experienced that would allow a jury to consider her claim for IIED. *See also,* Tanner, *supra*, 461 S.E.2d at 157 n. 11, quoting *Restatement of Torts (Second),* § 46, cmt. j (1965). ("It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.") This Court recognizes that,

> [i]t is only where [the emotional distress] is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.

Tiernan, *supra,* 504 S.E. 2d at 430, quoting *Restatement, supra.*

Following her termination, Appellant continued to live in the same household in which she lived, prior to her employment with Appellee WMH. Appellant has presented no evidence that her relationship with her fiancé, or daughter, or any other individual was affected by the conduct Appellant alleges was intentional or reckless. Furthermore, Appellant was able to apply for other employment, and, in fact, returned to the work force within a few months after her employment with Appellee WMH was terminated.

The record is devoid of any evidence and Appellant has failed to point to the existence of any evidence, by which a reasonable juror could conclude that Appellant suffered emotional distress of such severity that a reasonable person could not be expected to endure it. Therefore, this Court should uphold the circuit court's ruling with respect to Count V of Plaintiff's Amended Complaint.

CONCLUSION

It is clear that the trial court made correct rulings on all of the issues discussed above. After reviewing the evidence presented to the circuit court, this Court should uphold the Orders entered on July 28, 2006 and February 7, 2007, granting summary judgment to Appellees in this proceeding.

REQUEST FOR RELIEF

The Appellees respectfully request that this Court reject Appellant's assignment of error, and for such further relief that this Court sees fit.

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC., D/B/A WILLIAMSON MEMORIAL HOSPITAL, INC., JACQUELINE ATKINS, and CASSIE BALL

BY COUNSEL

MUNDY & NELSON
Post Office Box 2986
Huntington, West Virginia 25728
(304) 525-1406

BY: _____
Debra A. Nelson
West Virginia State Bar # 6644

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CRYSTAL A. HATFIELD

Appellant, Plaintiff below,

v.

No.: 072111
CIVIL ACTION NO. 05-C 157
The Honorable Michael Thornsbury
Circuit Court of Mingo County

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC., d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually

Appellee, Defendants below.

CERTIFICATE OF SERVICE

I, Debra A. Nelson, counsel for Health Management Associates of West Virginia, Inc. d/b/a Williamson Memorial Hospital, Jacqueline Atkins, and Cassie Ball, hereby certify that I have served a true and correct copy of the foregoing **RESPONSE BRIEF OF APPEALLEE HEALTH MANAGEMENT ASSOCIATES, INC., D/B/A WILLIAMSON MEMORIAL HOSPITAL, INC., JACQUELINE ATKINS, and CASSIE BALL,** upon the following counsel of record, via overnight mail, on this the 8th day of January, 2008:

Jeffrey V. Mehalic (WV State Bar No. 2519)
Law Offices of Jeffrey V. Mehalic
2011 Quarrier Street
P.O. Box 11133
Charleston, WV 25339-1133

Counsel for Appellant Crystal A. Hatfield

lson
a State Bar #6644
ELSON
Box 2986
West Virginia 25728
06

Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street, East
P.O. Box 1791
Charleston, WV 25326

Of counsel for Appellant Crystal A. Hatfield

Debra A. Nelson
West Virginia State Bar #6644
MUNDY & NELSON
Post Office Box 2986
Huntington, West Virginia 25728
304-525-1406